

## SUMMARY OF PROPOSED COMMITTEE DRAFT:

### Bill 40 (2019) RELATING TO PLASTIC.

The **PROPOSED CD1** makes the following amendments:

- A. In SECTION 1 of the bill ("Purpose and Findings"), revises the general comments and findings of the Council.
- B. In SECTION 2 of the bill, adds a new definition of "Plastic" to ROH Section 9-9.1 ("Definitions") to read as follows:  
  
"Plastic" means any material made of fossil fuel-derived or petrochemical polymeric compounds and additives that can be shaped by flow.
- C. In SECTION 2 of the bill, amends the definitions of "Plastic checkout bag" and "Plastic film bag" in ROH Section 9-9.1 ("Definitions") to limit existing exclusions to:
  - (A) Handle-less plastic bags used by customers inside a business to package loose items, such as fruits, vegetables, nuts, ground coffee, grains, candies, or small hardware items;
  - (B) Bags used to contain or wrap frozen foods, meat or fish, flowers or potted plants, or other items to contain dampness;
  - (C) Newspaper bags for home newspaper delivery;
  - (D) Laundry, dry cleaning, or garment bags;
  - (E) Bags sold in packages containing multiple bags intended for use as garbage, pet waste, or yard waste bags;
  - (F) Bags used to contain live animals, such as fish or insects sold in pet stores; and
  - (G) Bags used to transport chemical pesticides, drain-cleaning chemicals, or other caustic chemicals sold at the retail level; provided that this exemption shall be limited to one bag per customer.

Exclusions (A) and (D) have been modified from the "as introduced" version.

- D. SECTION 3 of the bill repeals Article 27, Chapter 41, Revised Ordinances of Honolulu 1990 ("Polystyrene foam container").
- E. SECTION 4 establishes a new Article 27 which restricts the use of Polystyrene Foam Food Ware and Disposable Plastic Service Ware and Disposable Plastic Food Ware as follows:
  - 1. Defines "Service ware" as stirrers, straws, baran, and utensils including forks, spoons, sporks, and knives; but the term does not include items

contained within or attached to packaging of food or beverages, such as straws pre-packaged and sold with beverage boxes, or utensils pre-packaged and sold with ice cream or salads.

2. Defines "Plastic food ware" as hot and cold beverage cups, cup lids, plates, bowls, bowl lids, "clamshells," trays, or other hinged or lidded containers that contain plastic and are used for selling or providing food or beverage for consumption on or off the premises of a business; but the term does not include disposable plastic condiment packets; food-related bags or wrappers, such as musubi wraps, plastic film, poi bags, chip bags, cracker and cookie wrappers, bread bags, meal kits, or ice bags; beverage-related bottles or cartons; packaging for unprepared food; packaging for prepared food, beverage, baked goods or dairy products for wholesale distribution; and pre-packaged or pre-sealed items typically sold by a food vendor, such as bentos, kimchi, seaweed salad, takuan and tofu.
3. Establishes the following restrictions on polystyrene foam food ware, disposable plastic service ware, and disposable plastic food ware:
  - a. No food vendor shall sell, serve, or provide prepared food in any polystyrene foam food ware to customers.
  - b. No food vendor shall sell or provide disposable plastic service ware to customers.
  - c. No food vendor shall sell, serve, or provide prepared food in disposable plastic food ware to customers.
  - d. Polystyrene foam food ware shall not be sold or provided, or offered for sale or use at any city facility, city-authorized concession, city-sponsored or city-permitted event, or city program.
4. Provides exemptions for:
  - a. "No reasonable alternatives available" and "Significant hardship," upon application and the provision of sufficient evidence, which is valid for up to two years and renewable so long as diligent efforts are made by the applicant to be compliant;
  - b. "Industry hardship," upon application and provision of sufficient evidence that compliance would cause hardship to the food service industry;
  - c. Disposable plastic straws for medical or physical conditions, as well as hospitals and certain similar healthcare facilities and agencies;
  - d. Packaging for raw meat, poultry, seafood, and eggs;

- d. Packaging for shelf-stable, grab-and-go, and catered foods and beverages contained within disposable plastic food ware; and
    - e. Packaging in any situation deemed by the city to be an emergency.
  - 5. Establishes a ban on the sale of polystyrene food ware, disposable plastic service ware and disposable plastic food ware by any business, excluding food vendors.
  - 6. Establishes that a food vendor may only provide or distribute disposable service ware for prepared food or beverages upon the request or affirmative response of a customer or in a self-service area or dispenser.
  - 7. Establishes enforcement and administration of this article, as under the jurisdiction of the department of environmental services and provides for civil penalties and injunctive relief for violations thereof.
  - 8. Requires department of environmental services to adopt rules to implement, administer and enforce this article.
- F.** Establishes the bill's effective general date as January 1, 2020, provided that: the restrictions on polystyrene foam food ware and disposable plastic service ware, as well as the provision of disposable service ware upon request, take effect on January 1, 2021; and the restrictions on disposable plastic food ware and the ban on the sale of polystyrene foam food ware, disposable plastic service ware and disposable plastic food ware, take effect on January 1, 2022.
- G.** Makes miscellaneous technical and nonsubstantive amendments.



**CITY COUNCIL**  
CITY AND COUNTY OF HONOLULU  
HONOLULU, HAWAII

ORDINANCE \_\_\_\_\_

BILL **40 (2019), CD1**

**A BILL FOR AN ORDINANCE      PROPOSED**

RELATING TO PLASTIC.

BE IT ORDAINED by the People of the City and County of Honolulu:

SECTION 1. Purpose and Findings. The purpose of this ordinance is to address the provision of certain single-use plastic goods and plastic bags.

The impact of the world's increasing waste stream is unsustainable and detrimental to the future of Hawaii's economy and the health and safety of its people. Plastics entering the environment have a demonstrable adverse effect on the health of the people of Honolulu, as well as the environmental integrity of our islands. Single-use plastic service ware and packaging are major contributors to street and beach litter, ocean pollution, harm to marine and other wildlife, and greenhouse gas emissions, which directly contribute to the global climate crisis.

A significant portion of marine debris -- estimated to be 80 percent -- originates on land, primarily as escaped refuse and litter, much of it plastic, in urban runoff. These land-based plastics degrade into pieces and particles of all sizes, including microplastics, and are present in the world's oceans at all trophic levels. Among other hazards, plastic debris attract and concentrate ambient pollutants like heavy metals and persistent organic pollutants in seawater and freshwater, which can transfer to fish, and other seafood, that is eventually caught and sold for human consumption.

The City and County of Honolulu ("City") is a recognized leader in developing responsible waste management policies and programs. In order to protect health, life, and property and preserve the order and security of the City and its inhabitants, ordinances have been enacted to regulate the use of plastic and non-recyclable paper bags provided by businesses to customers. In continuing to strive for responsible waste management policies and programs, the City must address the provision of single-use plastic goods.

Reduction of the amount of non-degradable and non-recyclable waste that enters the waste stream is consistent with the City's proposed Integrated Solid Waste Management Plan, which aims to reduce per capita waste generation by 25 percent by 2030 and to reduce carbon emissions from the waste stream by substantially reducing or eliminating carbon-based single-use plastics and polystyrene by 2030. These measures are also consistent with the 2030 solid waste reduction goals set forth by the State-level *Aloha+ Challenge*, to which Honolulu is a signatory, which include to "support changes in design, material use, and manufacturing that reduce waste and toxicity" and to "significantly reduce the annual generation of solid waste."



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Through this measure, it is the Council's intent to protect human safety and welfare, and to improve environmental quality on the island, in the neighboring marine environment, and globally.

SECTION 2. Section 9-9.1, Revised Ordinances of Honolulu 1990 ("Definitions"), is amended as follows:

1. By adding a new definition of "Plastic" to read as follows:

"Plastic" means any material made of fossil fuel-derived or petrochemical polymeric compounds and additives that can be shaped by flow."

2. By amending the definitions of "Plastic checkout bag" and "Plastic film bag" to read as follows:

"Plastic checkout bag":

- (1) Means a carryout bag that is provided by a business to a customer for the purpose of transporting groceries or other retail goods, and is made from plastic and not specifically designed and manufactured for [multiple] long-term re-use;
- (2) This term does not include:
  - (A) [Bags] Handle-less plastic bags used by customers inside a business to package loose items, such as fruits, vegetables, nuts, ground coffee, grains, candies, or small hardware items;
  - (B) Bags used to contain or wrap frozen foods, meat or fish, flowers or potted plants, or other items to contain dampness;
  - (C) ~~[Bags used to protect or transport prepared foods, beverages, or bakery goods;~~
  - ~~(D) — Bags provided by pharmacists to contain prescription medications;~~
  - ~~(E)]~~ Newspaper bags for home newspaper delivery;
  - ~~[(F) — Door hanger bags;~~
  - ~~(G)](D)~~ Laundry, dry cleaning, or garment bags ~~[, including bags provided by hotels to guests to contain wet or dirty clothing];~~



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~~[(H)]~~(E) Bags sold in packages containing multiple bags intended for use as garbage, pet waste, or yard waste bags;

~~[(H)]~~(F) Bags used to contain live animals, such as fish or insects sold in pet stores; or

~~[(H)]~~(G) Bags used to transport chemical pesticides, drain-cleaning chemicals, or other caustic chemicals sold at the retail level; provided that this exemption shall be limited to one bag per customer."

"Plastic film bag":

(1) Means a plastic bag made out of thin flexible sheets of plastic with a thickness of 10 mils or less;

(2) This term does not include:

(A) ~~[Bags]~~ Handle-less plastic bags used by customers inside a business to package loose items, such as fruits, vegetables, nuts, ground coffee, grains, candies, or small hardware items;

(B) Bags used to contain or wrap frozen foods, meat or fish, flowers or potted plants, or other items to contain dampness;

(C) ~~[Bags used to protect or transport prepared foods, beverages, or bakery goods;~~

~~(D) — Bags provided by pharmacists to contain prescription medications;~~

~~(E)]~~ Newspaper bags for home newspaper delivery;

~~[(F)] — Door hanger bags;~~

~~(G)]~~(D) Laundry, dry cleaning, or garment bags [~~including bags provided by hotels to guests to contain wet or dirty clothing~~];

~~[(H)]~~(E) Bags sold in packages containing multiple bags intended for use as garbage, pet waste, or yard waste bags;

~~[(H)]~~(F) Bags used to contain live animals, such as fish or insects sold in pet stores; or



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~~[(J)]~~(G) Bags used to transport chemical pesticides, drain-cleaning chemicals, or other caustic chemicals sold at the retail level; provided that this exemption shall be limited to one bag per customer."

SECTION 3. Article 27 of Chapter 41, Revised Ordinances of Honolulu 1990 ("Polystyrene Foam Containers") is repealed.

SECTION 4. Chapter 41, Revised Ordinances of Honolulu 1990 ("Regulated Activities"), is amended by adding a new Article 27, to read as follows:

**"Article 27. Polystyrene Foam Food Ware and Disposable Food Service Ware**

**Sec. 41-27.1 Definitions.**

"Business" means any commercial enterprise or establishment operating in the City and County of Honolulu, including an individual proprietorship, joint venture, partnership, corporation, limited liability company, or other legal entity, whether for profit or not for profit, and includes all employees of the business or any independent contractors associated with the business; but the term does not include "food vendor."

"Cater" means the provision of food in bulk quantity amounts or multiple servings with the intent for later consumption, or the provision of food service at a remote site or event venue.

"Customer" means any person purchasing food or beverages from a food vendor.

"Department" means the department of environmental services.

"Disposable" means designed for single-use then discarded, and not designed or manufactured to be washed and sanitized or to be used repeatedly over an extended period of time.

"Food vendor" means any entity or person selling or providing prepared food or beverage for consumption within the City and County of Honolulu, including any store, shop, sales outlet, pharmacy, restaurant, bar, pub, coffee shop, cafeteria, caterer, convenience store, liquor store, grocery store, supermarket, delicatessen, food truck, catering vehicle or cart, roadside stand, or other establishment that sells or provides prepared food for consumption within the city.



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"Grab-and-go" means foods or beverages that are pre-packaged or pre-sealed in plastic food ware and intended for consumption within three days of preparation and are not shelf stable, including, but not limited to, pre-made sandwiches, desserts, pies, noodles, salads, parfaits, and drinks.

"Plastic" means any material made of fossil fuel-derived or petrochemical polymeric compounds and additives that can be shaped by flow.

"Plastic food ware" means hot and cold beverage cups, cup lids, plates, bowls, bowl lids, "clamshells," trays, or other hinged or lidded containers that contain plastic and are used for selling or providing food or beverage for consumption on or off the premises of a food vendor; but the term does not include disposable plastic condiment packets; food-related bags or wrappers, such as musubi wraps, plastic film, poi bags, chip bags, cracker and cookie wrappers, bread bags, meal kits, or ice bags; beverage-related bottles or cartons; packaging for unprepared food; packaging for prepared food, beverage, baked goods or dairy products for wholesale distribution; and pre-packaged or pre-sealed items typically sold by a food vendor, such as bentos, kimchi, seaweed salad, takuan and tofu.

"Polystyrene foam" means blown polystyrene and expanded and extruded foams which are thermoplastic petrochemical materials utilizing a styrene monomer and processed by any number of techniques including, but not limited to, fusion of polymer spheres (expanded bead polystyrene) injection molding, foam molding, and extrusion-blow molding (extruded foam polystyrene). Polystyrene foam does not include clear, solid or oriented polystyrene.

"Polystyrene foam food ware" means hot and cold beverage cups, cup lids, plates, bowls, bowl lids, "clamshells," trays, or other hinged or lidded containers, that are made of polystyrene foam and used for selling or providing food and beverage for consumption on or off the premises of a food vendor; but the term does not include polystyrene foam coolers and ice chests specifically designed and manufactured for multiple re-use, and soup or noodles packaged with polystyrene foam that has been filled and sealed prior to receipt by the food vendor.

"Prepared food" means food or beverages that are prepared for consumption by cooking, chopping, peeling, slicing, mixing, brewing, freezing, squeezing, or otherwise processed at premises owned, leased, or otherwise controlled by the food vendor; but the term does not include raw uncooked eggs, whole fruits and vegetables, or raw uncooked meats, poultry, and seafood. Prepared food may be eaten either on or off the premises of the food vendor.





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"Service ware" means any stirrers, straws, baran, and utensils including forks, spoons, sporks, and knives; but the term does not include items contained within or attached to packaging of food or beverages, such as disposable plastic straws pre-packaged and sold with beverage boxes, or disposable plastic utensils pre-packaged and sold with ice cream or salads.

"Shelf Stable" means food or beverage that is packaged with plastic food ware that can be safely stored at room temperature for a time period exceeding three days.

"Utensils" are implements intended to assist in the consumption of food or drink.

**Sec. 41-27.2            Restriction on polystyrene foam food ware, disposable plastic service ware and disposable plastic food ware.**

- (a) Unless exempted under Section 41-27.3, no food vendor shall sell, serve, or provide prepared food in any polystyrene foam food ware to customers.
- (b) Unless exempted under Section 41-27.3, no food vendor shall sell, serve or provide disposable plastic service ware to customers.
- (c) Unless exempted under Section 41-27.3, no food vendor shall sell, serve, or provide prepared food in disposable plastic food ware to customers.
- (d) Unless exempted under Section 41-27.3, polystyrene foam food ware shall not be sold or provided, or offered for sale or use at any city facility, city-authorized concession, city-sponsored or city-permitted event, or city program.

**Sec. 41-27.3            Exemptions.**

- (a) The department may grant an exemption from compliance with the prohibitions of Section 41-27.2 upon application and the provision of sufficient evidence that there are no reasonable alternatives available to the food vendor to comply, or compliance with the prohibition would cause significant hardship for the food vendor.

For purposes of this section, exemptions may be granted for a specified term of up to two years, and may be subsequently renewed for a specified term of up to two years, provided that during the term of the exemption, diligent efforts are made by the food vendor to become compliant.



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- (1) In situations where there are no reasonable alternatives available, a food vendor may submit an application, preferably on a form provided by the director, and shall set forth with specificity:
  - (i) The name, address, and copy of the food vendor's most current business registration certificate;
  - (ii) A description of the polystyrene foam food ware, disposable plastic service ware or disposable plastic food ware at issue;
  - (iii) The factual basis to support the requested determination that there is no reasonable alternative to the use of the non-compliant product at issue, which for example, may include packaging necessary for safely containing food that is of significantly high or low temperature, impact to Hazard Analysis and Critical Control Points plan applicable to the food vendor, or specific transportation requirements or safeguards; and
  - (iv) Copies of all exemptions issued to the applicant under this article.
- (2) In situations where compliance would cause significant hardship, a food vendor may submit an application, preferably on a form provided by the director, and shall set forth with specificity:
  - (i) The name, address, and copy of the food vendor's most current business registration certificate ;
  - (ii) A description of the polystyrene foam food ware, disposable plastic service ware or disposable plastic food ware at issue;
  - (iii) The factual basis to support the requested determination that the use of a compliant product at issue would cause the applicant significant hardship and there is no affordable compliant alternative; and
  - (iv) Copies of all exemptions issued to the applicant under this article.



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- (b) The department may grant an "industry exemption" from compliance with the prohibitions of Section 41-27.2 upon application and the provision of sufficient evidence that compliance with Section 41-27.2 would cause hardship to the food service industry. "Hardship" under this subsection will be construed to include, but not be limited to: situations where there are no acceptable alternatives to providing polystyrene foam food ware, disposable plastic series ware, or disposable plastic food ware to customers; or situations where acceptable alternatives are not readily available due to market supply restraints.

For purposes of this section, an "industry exemption" may be granted for a specified term of up to two years, and may be subsequently renewed for a specified term of up to two years, provided that during the term of the exemption, diligent efforts are made by the industry applicant to become compliant.

- (c) Disposable plastic straws may be provided, upon request, to customers for whom non-fossil-fuel-based straws are unsuitable due to medical or physical conditions. Otherwise, straws must be fossil-fuel free or designed to be reusable. The following entities are exempt from compliance with the prohibitions of Section 41-27.2(b), specific to disposable plastic straws:
- (1) A "hospital" as defined under Hawaii Administrative Rules section 11-93-2;
  - (2) A "nursing facility" as defined under Hawaii Administrative Rules section 11-94.1-2;
  - (3) An "assisted living facility" as defined under Hawaii Administrative Rules section 11-90-2;
  - (4) An "adult residential care home" ("ARCH") and "expanded ARCH" as defined under Hawaii Administrative Rules section 11-100.1-2;
  - (5) A "hospice service agency" as defined under Hawaii Revised Statutes section 321-15.63(b);
  - (6) A "hospice home" as defined under Hawaii Revised Statutes section 321-15.1;
  - (7) A "home health agency" as defined under Hawaii Administrative Rules section 11-97-1; and
  - (8) A "home care agency" as defined under Hawaii Administrative Rules section 11-700-2."



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- (d) The following shall be exempt from compliance with the prohibitions of Section 41-27.2:
- (1) Packaging for raw meat, poultry, seafood, and eggs;
  - (2) Packaging for shelf stable foods and beverages contained within disposable plastic food ware;
  - (3) Packaging for grab-and-go or catered foods and beverages contained within disposable plastic food ware;
  - (4) Packaging in any situation deemed by the city to be an emergency requiring the immediate preservation of life, health, property, safety, or essential public services. This exemption shall be in place until the emergency has ceased or the mayor has determined that the exemption is no longer applicable to the situation.

**Sec. 41-27.4          Ban on sale of polystyrene foam food ware, disposable plastic service ware and disposable plastic food ware.**

No business shall sell polystyrene foam food ware, disposable plastic service ware or disposable plastic food ware. This section does not apply to food vendors.

**Sec. 41-27.5          Disposable service ware upon request.**

- (a) A food vendor may only provide or distribute disposable service ware for prepared food or beverage upon the request or affirmative response of a customer or person being provided the prepared food or beverage, or in a self-service area or dispenser.
- (b) The department shall engage in an education and outreach campaign in coordination with community and business partners to facilitate implementation of this section.

**Sec. 41-27.6          Enforcement, civil penalties and injunctive relief.**

- (a) Enforcement and administration of this article is under the jurisdiction of the department of environmental services.
- (b) Any food vendor or business violating any provision of this article or any rule adopted pursuant to this article shall:



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- (1) Be ordered to discontinue the distribution or sale of items prohibited by this article; and
- (2) If continuing the distribution despite the order, be subject to a civil fine of not less than \$100 nor more than \$1,000 for each day of violation.
- (c) The director of environmental services may institute a civil action in any court of competent jurisdiction for injunctive or other relief to correct or abate violations of this article or any rule adopted pursuant to this article, to collect administrative penalties, or to obtain other relief.

**Sec. 41-27.7 Rules.**

The director of environmental services shall adopt rules pursuant to HRS Chapter 91 regarding the implementation, administration and enforcement of this article."

SECTION 5. Ordinance material to be repealed is bracketed and stricken. New material is underscored. When revising, compiling, or printing this ordinance for inclusion in the Revised Ordinances of Honolulu, the Revisor of Ordinances need not include the brackets, the material that has been bracketed and stricken, or the underscoring.



**CITY COUNCIL**  
CITY AND COUNTY OF HONOLULU  
HONOLULU, HAWAII

ORDINANCE \_\_\_\_\_

BILL **40 (2019), CD1**

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SECTION 6. This ordinance generally takes effect on January 1, 2020, provided that: Sections 41-27.2 (a), 41-27.2(b), 41-27.2(d) and 41-27.5, Revised Ordinances of Honolulu, as enacted in SECTION 3, shall take effect on January 1, 2021; and Sections 41-27.2(c) and 41-27.4, Revised Ordinances of Honolulu, as enacted in SECTION 3, shall take effect on January 1, 2022.

INTRODUCED BY:

Joey Manahan

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DATE OF INTRODUCTION:

July 9, 2019  
Honolulu, Hawaii

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Councilmembers

APPROVED AS TO FORM AND LEGALITY:

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Deputy Corporation Counsel

APPROVED this \_\_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_\_.

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KIRK CALDWELL, Mayor  
City and County of Honolulu